

1 AN ACT relating to minimum wage for tipped employees.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 337.275 is amended to read as follows:

4 (1) Except as may otherwise be provided by this chapter, every employer shall pay to
5 each of his employees wages at a rate of not less than five dollars and eighty-five
6 cents (\$5.85) an hour beginning on June 26, 2007, not less than six dollars and fifty-
7 five cents (\$6.55) an hour beginning July 1, 2008, and not less than seven dollars
8 and twenty-five cents (\$7.25) an hour beginning July 1, 2009. If the federal
9 minimum hourly wage as prescribed by 29 U.S.C. sec. 206(a)(1) is increased in
10 excess of the minimum hourly wage in effect under this subsection, the minimum
11 hourly wage under this subsection shall be increased to the same amount, effective
12 on the same date as the federal minimum hourly wage rate. If the state minimum
13 hourly wage is increased to the federal minimum hourly wage, it shall include only
14 the federal minimum hourly rate prescribed in 29 U.S.C. sec. 206(a)(1) and shall not
15 include other wage rates or conditions, exclusions, or exceptions to the federal
16 minimum hourly wage rate. In addition, the increase to the federal minimum hourly
17 wage rate does not extend or modify the scope or coverage of the minimum wage
18 rate required under this chapter.

19 (2) Notwithstanding the provisions of subsection (1) of this section, for any employee
20 engaged in an occupation in which he customarily and regularly receives more than
21 thirty dollars (\$30) per month in tips from patrons or others, the employer may pay
22 as a minimum not less than:

23 **(a) Beginning on the effective date of this Act, three dollars (\$3) an hour; and**

24 **(b) Beginning on July 1, 2018, and July 1 of each year thereafter, an hourly**
25 **wage equal to the amount determined under this subsection for the**
26 **preceding year, increased by the lesser of:**

27 **1. Ninety-five cents (\$0.95) per hour; or**

1 2. The amount necessary for the wage in effect under this subsection to
 2 equal seventy percent (70%) of the wage in effect under subsection (1)
 3 of this section for the period, rounded to the nearest multiple of five
 4 cents (\$0.05)~~[the hourly wage rate required to be paid a tipped employee~~
 5 ~~under the federal minimum hourly wage law as prescribed by 29 U.S.C.~~
 6 ~~sec. 203].~~

7 **(3)** The employer shall establish by his records that for each week where credit is taken,
 8 when adding tips received to wages paid, not less than the minimum rate prescribed
 9 in subsection (1) of this section~~[29 U.S.C. sec. 203]~~ was received by the employee.
 10 No employer shall use all or part of any tips or gratuities received by employees
 11 toward the payment of the statutory minimum hourly wage as required by
 12 subsection (1) of this section~~[29 U.S.C. sec. 203]~~. Nothing, however, shall prevent
 13 employees from entering into an agreement to divide tips or gratuities among
 14 themselves.

15 ➔Section 2. KRS 337.010 is amended to read as follows:

16 (1) As used in this chapter, unless the context requires otherwise:

17 (a) "Commissioner" means the commissioner of the Department of Workplace
 18 Standards under the direction and supervision of the secretary of the Labor
 19 Cabinet;

20 (b) "Department" means the Department of Workplace Standards in the Labor
 21 Cabinet;

22 (c) 1. "Wages" includes any compensation due to an employee by reason of his
 23 or her employment, including salaries, commissions, vested vacation
 24 pay, overtime pay, severance or dismissal pay, earned bonuses, and any
 25 other similar advantages agreed upon by the employer and the employee
 26 or provided to employees as an established policy. The wages shall be
 27 payable in legal tender of the United States or checks on banks

- 1 convertible into cash on demand at full face value, subject to the
2 allowances made in this chapter;
- 3 2. For the purposes of calculating hourly wage rates for scheduled overtime
4 for professional firefighters, as defined in KRS 95A.210(5), "wages"
5 shall not include the distribution to qualified professional firefighters by
6 local governments of supplements received from the Firefighters
7 Foundation Program Fund. For the purposes of calculating hourly wage
8 rates for unscheduled overtime for professional firefighters, as defined in
9 KRS 95A.210(6), "wages" shall include the distribution to qualified
10 professional firefighters by local governments of supplements received
11 from the Firefighters Foundation Program Fund;
- 12 (d) "Employer" is any person, either individual, corporation, partnership, agency,
13 or firm who employs an employee and includes any person, either individual,
14 corporation, partnership, agency, or firm acting directly or indirectly in the
15 interest of an employer in relation to an employee; and
- 16 (e) "Employee" is any person employed by or suffered or permitted to work for an
17 employer.
- 18 (2) As used in KRS 337.275 to 337.325, 337.345, and KRS 337.385 to 337.405, unless
19 the context requires otherwise:
- 20 (a) "Employee" is any person employed by or suffered or permitted to work for an
21 employer, but shall not include:
- 22 1. Any individual employed in agriculture;
- 23 2. Any individual employed in a bona fide executive, administrative,
24 supervisory, or professional capacity, or in the capacity of outside
25 salesman, or as an outside collector as the terms are defined by
26 administrative regulations of the commissioner;
- 27 3. Any individual employed by the United States;

- 1 4. Any individual employed in domestic service in or about a private home.
2 The provisions of this section shall include individuals employed in
3 domestic service in or about the home of an employer where there is
4 more than one (1) domestic servant regularly employed;
- 5 5. Any individual classified and given a certificate by the commissioner
6 showing a status of learner, apprentice, worker with a disability,
7 sheltered workshop employee, and student under administrative
8 procedures and administrative regulations prescribed and promulgated
9 by the commissioner. This certificate shall authorize employment at the
10 wages, less than the established fixed minimum fair wage rates, and for
11 the period of time fixed by the commissioner and stated in the certificate
12 issued to the person;
- 13 6. Employees of retail stores, service industries, hotels, motels, and
14 restaurant operations whose average annual gross volume of sales made
15 for business done is less than five hundred thousand dollars
16 ~~(\$500,000)~~~~[ninety-five thousand dollars (\$95,000)]~~ for the five (5)
17 preceding years exclusive of excise taxes at the retail level or if the
18 employee is the parent, spouse, child, or other member of his or her
19 employer's immediate family;
- 20 7. Any individual employed as a baby-sitter in an employer's home, or an
21 individual employed as a companion by a sick, convalescing, or elderly
22 person or by the person's immediate family, to care for that sick,
23 convalescing, or elderly person and whose principal duties do not
24 include housekeeping;
- 25 8. Any individual engaged in the delivery of newspapers to the consumer;
- 26 9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A,
27 30A, and 18A provided that the secretary of the Personnel Cabinet shall

1 have the authority to prescribe by administrative regulation those
2 emergency employees, or others, who shall receive overtime pay rates
3 necessary for the efficient operation of government and the protection of
4 affected employees;

5 10. Any employee employed by an establishment which is an organized
6 nonprofit camp, religious, or nonprofit educational conference center, if
7 it does not operate for more than seven (7) months in any calendar year;

8 11. Any employee whose function is to provide twenty-four (24) hour
9 residential care on the employer's premises in a parental role to children
10 who are primarily dependent, neglected, and abused and who are in the
11 care of private, nonprofit childcaring facilities licensed by the Cabinet
12 for Health and Family Services under KRS 199.640 to 199.670; or

13 12. Any individual whose function is to provide twenty-four (24) hour
14 residential care in his or her own home as a family caregiver and who is
15 approved to provide family caregiver services to an adult with a
16 disability through a contractual relationship with a community board for
17 mental health or individuals with an intellectual disability established
18 under KRS 210.370 to 210.460, or is certified or licensed by the Cabinet
19 for Health and Family Services to provide adult foster care;

20 (b) "Agriculture" means farming in all its branches, including cultivation and
21 tillage of the soil; dairying; production, cultivation, growing, and harvesting of
22 any agricultural or horticultural commodity; raising of livestock, bees,
23 furbearing animals, or poultry; and any practice, including any forestry or
24 lumbering operations, performed on a farm in conjunction with farming
25 operations, including preparation and delivery of produce to storage, to
26 market, or to carriers for transportation to market;

27 (c) "Gratuity" means voluntary monetary contribution received by an employee

1 from a guest, patron, or customer for services rendered;

2 (d) "Tipped employee" means any employee engaged in an occupation in which
3 he or she customarily and regularly receives more than thirty dollars (\$30) per
4 month in tips; and

5 (e) "U.S.C." means the United States Code.

6 (3) As used in KRS 337.505 to 337.550, unless the context requires otherwise:

7 (a) "Construction" includes construction, reconstruction, improvement,
8 enlargement, alteration, or repair of any public works project by contract fairly
9 estimated to cost more than two hundred fifty thousand dollars (\$250,000). No
10 public works project, if procured under a single contract and subject to the
11 requirements of this section, may be divided into multiple contracts of lesser
12 value to avoid compliance with the provisions of this section;

13 (b) "Contractor" and "subcontractor" include any superintendent, foreman, or
14 other authorized agent of any contractor or subcontractor who is in charge of
15 the construction of the public works or who is in charge of the employment or
16 payment of the employees of the contractor or subcontractor who are
17 employed in performing the work to be done or being done by the contractor
18 or subcontractor under the particular contract with any public authority;

19 (c) 1. "Locality" shall be determined by the commissioner. The commissioner
20 may designate more than one (1) county as a single locality, but if more
21 than one (1) county is designated, the multicounty locality shall not
22 extend beyond the boundaries of a state Senatorial district. The
23 commissioner shall not designate less than an entire county as a locality.
24 If there is not available in the locality a sufficient number of competent,
25 skilled laborers, workmen, and mechanics to efficiently and properly
26 construct the public works, "locality" shall include any other locality
27 nearest the one in which the work of construction is to be performed and

1 from which such available skilled laborers, workmen, and mechanics
2 may be obtained in sufficient number to perform the work; and

3 2. "Locality" with respect to contracts advertised or awarded by the
4 Transportation Cabinet of this state shall be determined by the secretary
5 of the Transportation Cabinet. The secretary may designate any number
6 of counties as constituting a single locality. The secretary may also
7 designate all counties of the Commonwealth as a single locality, but he
8 or she shall not designate less than an entire county as a locality;

9 (d) "Public authority" means any officer, board, or commission of this state, or
10 any political subdivision or department thereof in the state, or any institution
11 supported in whole or in part by public funds, including publicly owned or
12 controlled corporations, authorized by law to enter into any contract for the
13 construction of public works and any nonprofit corporation funded to act as an
14 agency and instrumentality of the government agency in connection with the
15 construction of public works, and any "private provider", as defined in KRS
16 197.500, which enters into any contract for the construction of an "adult
17 correctional facility", as defined in KRS 197.500; and

18 (e) "Public works" includes all buildings, roads, streets, alleys, sewers, ditches,
19 sewage disposal plants, waterworks, and all other structures or work,
20 including "adult correctional facilities", as defined in KRS 197.500,
21 constructed under contract with any public authority.

22 (4) If the federal government or any of its agencies furnishes by loans or grants any part
23 of the funds used in constructing public works, and if the federal government or its
24 agencies prescribe predetermined prevailing minimum wages to be paid to
25 mechanics, workmen, and laborers employed in the construction of the public
26 works, and if KRS 337.505 to 337.550 is also applicable, those wages in each
27 classification which are higher shall prevail.